IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 474 of 2001.

Reserved on: 01.11.2007.

Decided on: 12.11.2007.

Kanshi Ram. … … Petitioner.

Versus

State of H.P. & Others. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *Yes.*

For the Petitioner: **Mr. Ajay Sharma, Advocate.**

For Respondents No.1 & 2: **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocate Generals.**

For Respondents No.3 to 7: **Mr. T.S. Chauhan, Advocate.**

For Respondents No.8 to 11: **Mr. Prashant Kanwar, Advocate.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the predecessor-in-interest of respondents N.3 to 5 and 7 filed petition under Section 54 of the Himachal Pradesh Consolidation of Holdings Act, 1971 (hereinafter referred to as the Act for brevity sake). The Additional Director of Consolidation vide

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Whether reporters of local papers may be allowed to see the judgment? Yes.

order dated 20.7.1995 remanded the case to the Settlement Officer, Consolidation, Bilaspur with the direction to decide the matter afresh after perusing the report of the Field Kanungo as well as by keeping in view the orders of the Financial Commissioner (Appeals). The Settlement Officer, Consolidation decided the case on 20.5.1996. The petitioner filed an appeal under Section 30(4) of the Act before the Additional Director of Consolidation. The appeal was dismissed by the Additional Director of Consolidation on 23.12.2000. Feeling aggrieved by the order passed by the Additional Director of Consolidation, the petitioner filed a revision before the Director, Consolidation on 14.5.2001. The petitioner had placed on record the copy of revision preferred before the Director, Consolidation on 2nd August, 2001. There is an endorsement made on the top of the revision that the village Jaballi stood denotified on 15.3.1989 vide Notification No.RAJ-BHU-A(P)51/78-2327-2334. The affidavit filed alongwith the revision was sworn on 11th May, 2001. The petitioner had filed application under Section 151 of CPC for interim relief. The affidavit annexed thereto was also sworn on 11th May, 2001.

Mr. Ajay Sharma, Advocate had strenuously argued that once the village Jaballi stood denotified vide Notification dated 15th March, 1989, the Additional Director, Consolidation could not pass the orders on 20.7.1995 since according to him the consolidation operations ceased. He then contended that the orders passed by the Settlement Officer, Consolidation, dated 20.5.1996 as well as order dated 23.12.2000 passed by the Additional Director,

Consolidation are also without jurisdiction. Mr. Ajay Sharma had alternatively argued that if his two pleas as raised are not accepted, in that eventuality, the revision preferred by him on 11.5.2001 before the Director, Consolidation was required to be adjudicated upon. The learned Advocate General had supported the orders passed by the competent authorities. Mr. Tara Singh Chauhan had supported the orders passed by the Additional Director, Consolidation dated 20.7.1995, order dated 20.5.1996 passed by the Settlement Officer, Consolidation on remand as well as the order dated 23.12.2000 passed by the Additional Director, Consolidation. He also submitted that the suit preferred by the petitioner bearing No.105/89 has been dismissed by the learned Sub Judge, Bilaspur on 31.8.1990 and the appeal against the judgment decree dated 31.8.1990 was dismissed by the learned District Judge, Bilaspur on 30.11.2000.

I have heard the learned counsel for the parties and perused the record.

The sequel of events as per the pleadings of the parties is that the predecessor-in-interest of respondents No.3 to 5 and 7 had filed revision petition under Section 54 of the Act before the Additional Director, Consolidation on 27.5.1998. This was decided by the Additional Director, Consolidation on 20.7.1995. During the pendency of this revision the village Jaballi stood denotified vide Notification No.RAJ-BHU-A(P)51/78-2327-2334, dated 15th March, 1989. The Additional Director, Consolidation remanded the matter back to the Settlement Officer, Consolidation. The Settlement

Officer, Consolidation passed the order dated 20.5.1996. This order was assailed by the present petitioner before the Additional Director, Consolidation on 26.3.1997. The appeal preferred by the petitioner under Section 30(4) of the Act was dismissed by the Additional Director, Consolidation on 23.12.2000. The revision petition preferred by the petitioner against the order dated 23.12.2000 under Section 54 of the Act has not been entertained by the Director, Consolidation on the ground that the consolidation proceedings ceased in village Jaballi on the basis of notification dated 15.3.1989. The revision petition dated 11.5.2001 was supported by affidavit dated 11th May, 2001. The application seeking interim relief was also supported by affidavit dated 11.5.2001.

The Director, Consolidation could not refuse to hear the petition preferred on 11.5.2001 only on the ground that the village Jaballi stood denotified vide notification dated 15.3.1989. The foundation for passing the orders dated 20.7.1995, 20.5.1996 and 23.12.2000 is the application preferred by the predecessor-in-interest of respondents No.3 to 5 and 7, dated 27.5.88. This application was preferred before the village Jaballi was denotified. Once the proceedings had initiated before the village Jaballi was denotified, the parties had absolute right to challenge the orders passed from time to time. Even order dated 20.7.1995 has been passed in favour of the predecessor-in-interest of respondents No.3 to 5 and 7 after the village Jaballi was denotified. The Settlement Officer, Consolidation had passed the orders dated

20.5.1996 on remand. The petitioner had assailed the orders passed by the Settlement Officer, dated 20.5.1996 before the Additional Director, Consolidation, who had rejected the same on 23.12.2000. The revision has been preferred against the order dated 23.12.2000, which as per the scheme of the Act was maintainable before the Director, Consolidation. The Director, Consolidation has failed to exercise the jurisdiction vested in him by refusing to entertain the revision preferred by the petitioner o n 11.5.2001.

The matter can also be viewed from another angle. The order dated 23.12.2000 was not final since the same was subject to revision under Section 54 of the Act.

Their Lordships of the Hon'ble Apex Court have held in ***Raymond Ltd. and Another versus State of Chhattisgarh and Others, (2007) 3 SCC 79*** that the order of quasi-judicial authority cannot be treated as final when it is subject to revision. Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"It is true that sub-section (2) of Section 56 of the Act does not refer to Section 32 but the same, in our opinion, was not necessary. Sub-section (4) of Section 56 was inserted by way of a State amendment. The intention of the legislature in inserting the said provision is clear and explicit as by reason thereof a power of revision has been conferred upon the highest authority of Revenue in the State viz. Board of Revenue. The revisional power is to be exercised by the Board of Revenue either on its own motion or on an application by any party. The term "any party" used in the said provision is of some significance. By reason of the said**

provision, not only the State but also the person who had filed an application under Section 31 of the Act, thus, may file a revision application before the Board of Revenue. The term "any party, therefore, implies both the parties to the lis and not the party filing an application under Section 31 of the Act alone. The revisional power is to be exercised by the Board so as to enable it to satisfy itself in regard to the amount with which the instrument is chargeable with duty. The revisional proceeding has a direct nexus with determination of an instrument being charged with duty and not the endorsement made thereupon at a subsequent stage.

In absence of any finality clause, it is difficult to comprehend that the right of the parties to approach the revisional authority in terms of sub-section (4) of Section56 of the Act shall stand denuded. The said provision also must be given full effect to. It cannot be said that the revisional authority although is conferred with a power to satisfy itself as to the correctness of otherwise of the order of the Collector determining the quantum of stamp duty payable to an instrument, it would not have any jurisdiction to do so only because the order was accepted by one party to the dispute."

Consequently, the writ petition is allowed. The Director, Consolidation is directed to entertain the revision preferred by the petitioner on 11.5.2001 and to hear the same in accordance with law. The Director, Consolidation is directed to conclude the proceedings within a period of three months from the date of receipt of certified copy of the judgment. The Director, Consolidation while adjudicating upon the revision preferred by the

petitioner under Section 54 of the Act will take into consideration the judgment dated 31.8.1990 passed by the learned Sub Judge, Bilaspur as well as the judgment dated 30.11.2000 of learned District Judge, Bilaspur. To avoid delay, the parties are directed to appear before the Director, Consolidation on December 3, 2007.

There shall be no order as to costs.

November 12, 2007. **(Rajiv Sharma), Judge.**
(sck)